

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





**77-1322**

UNITED STATES COURT OF APPEALS

for the  
SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

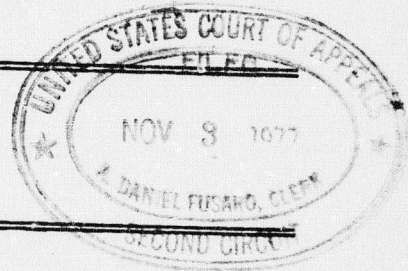
v.

MICHAEL SILBERBERG and  
MORDECAI SILBERBERG,

Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX FOR APPELLANTS  
MICHAEL SILBERBERG and  
MORDECAI SILBERBERG



ALBERT J. BRACKLEY, ESQ.  
Attorney for Appellant  
Michael Silberberg  
186 Jerolemon Street  
Brooklyn, New York 11201

HOWARD L. JACOBS, P.C.  
Attorney for Appellant  
Mordecai Silberberg  
401 Broadway  
New York, New York 10013

HOWARD L. JACOBS, ESQ.  
DONALD E. NAWI, ESQ.  
Of Counsel



PAGINATION AS IN ORIGINAL COPY



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## CRIMINAL DOCKET - U.S. District Court

PETTY OFFENSE PO ☐ JUDGE/MAGISTRATE Assigned: U.S. **ZILBERBERG, MICHAEL**  
 OTHER MINOR OFFENSE MO **0208 1 0835**  
 OTHER MISDEMEANOR Mis ☐ Disposition: ☐  
 FELONY Fel ☒ District Office (LAST FIRST, MIDDLE)

04 12

77 0264

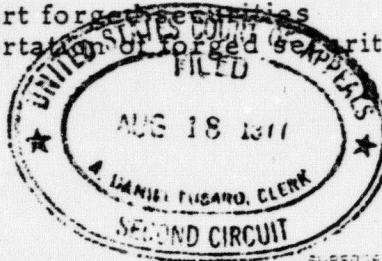
02

## U.S. TITLE/SECTION

18:371  
18:2314

## OFFENSES CHARGED

Consp. to transport forged securities  
Interstate transportation of forged securities



U.S. MAG.

CASE NO.

BAIL • RELEASE

☐ Denied ☐ AMT ☐ Set  
☐ Date ☐ 10 ☐ 90

☐ Bail Not Made ☐ C  
☐ Status Changed ☐ 30 ☐ 60

## II. KEY DATES &amp; INTERVALS

| ARREST or          | INDICTMENT                              | ARRAIGNMENT                          | TRIAL                              | SEN                                                                                                                                                                                                                                              |
|--------------------|-----------------------------------------|--------------------------------------|------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| U.S. Custody Began | High Risk Date                          | Information <input type="checkbox"/> | Trial Set For                      | Disposition of Charges                                                                                                                                                                                                                           |
| Summons Served     | Indict. Waived <input type="checkbox"/> | 4-14-77                              | Voir Dire <input type="checkbox"/> | 6-3-77                                                                                                                                                                                                                                           |
| First Appearance   | In Charging District                    | 1st Plea<br>4-14-77                  | Trial Began<br>6-2-77              | 7-3-77                                                                                                                                                                                                                                           |
|                    | Superseding <input type="checkbox"/>    | Final Plea                           | Trial Ended<br>6-3-77              | <input type="checkbox"/> Convicted <input type="checkbox"/> On<br><input type="checkbox"/> Acquitted <input type="checkbox"/> Or<br><input type="checkbox"/> Dismissed <input type="checkbox"/> W<br><input type="checkbox"/> On Government's Mo |

| SEARCHED   | INDEXED    | DATE | INITIAL NO. | INITIAL NO. | INITIAL NO. |
|------------|------------|------|-------------|-------------|-------------|
| SEARCHED   | INDEXED    |      |             |             |             |
| SERIALIZED | SERIALIZED |      |             |             |             |
| FILED      | FILED      |      |             |             |             |
| OFFENSE    | OFFENSE    |      |             |             |             |

U.S. Attorney for

Jeremy G. Epstein  
791-0036

ATTORNEYS

George S. Messner  
16 Court St Bklyn N.Y.  
11241 596-2596

Joseph L. Stone  
277 Bway  
32-2270

## Mordecai Zilberberg-02

| DATE    | DOCUMENT NO.                                                                                                                                                                                                                   | PROCESSING |
|---------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 4-12-77 | Filed Indictment. B/W Ordered.....Lasker, J.<br>B/W Issued.                                                                                                                                                                    |            |
| 4-13-77 | Filed affidavit for writ of H/C ad Pros. Issued & ret. 4/14/77.                                                                                                                                                                |            |
| 4-14-77 | Deft. (atty. George S. Meissner for arraignment only) pleads not guilty. Bail fixed at \$25,000 cash or surety. Deft. on writ. Writ adjourned sine die. B/W vacated. C assigned to Metzner, J. for all purposes.....Lasker, J. |            |
| 4-18-77 | Filed notice of appearance for G.S. Messner as atty for deft.                                                                                                                                                                  |            |
| 4-27-77 | Filed notice of appearance of J.L. Stone as atty for deft.                                                                                                                                                                     |            |
| 4-22-77 | Pre-trial conference held, deft on a writ with counsel The Court to hand down opinion on question of bail. Writ adj to April 26, 1977 TRIAL set for June 1, 1977...METZNER, J.                                                 |            |



| DATE                | IV. PROCEEDINGS (continued)                                                                                                                                                                                                            | PAGE TWO | V. EXCLUDABLE DELAY |      |    |     |
|---------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|---------------------|------|----|-----|
|                     | DOCUMENT NO.                                                                                                                                                                                                                           |          | FILED               | DATE | CD | NO. |
| 4-26-77             | Pre-trial conference held. Mr. Joseph Stone is now representing deft. Mr. George Messner moves to withdraw as atty for deft. Motion granted. All motions by May 16, 1977. Trial June 1, 1977.... METZNER, J.                           |          |                     |      |    |     |
| 4-27-77             | Filed CJA Form #23- Financial affid                                                                                                                                                                                                    |          |                     |      |    |     |
| 5-16-77             | Filed Govt's affid in opposition to the motion of deft to suppress.                                                                                                                                                                    |          |                     |      |    |     |
| 5-16-77             | Filed Govt's memorandum in response to deft's motion to suppress evidence                                                                                                                                                              |          |                     |      |    |     |
| 5-23-77             | Filed notice of appearance of Albert J. Brackley as atty for deft (186 Joralemon St. Bklyn, N.Y. 11201)                                                                                                                                |          |                     |      |    |     |
| 5-23-77             | Filed stipulation between all the parties that Albert J. Brackley Esq. be substituted as atty of record., in place of J. Stone Esq.                                                                                                    |          |                     |      |    |     |
| 5-20-77             | Motion by Gov't to amend title in this indictment and all other papers filed and to be filed, shall read as:<br>U.S.A. v. M. Silverberg & Mor. Silverberg, is granted without opposition. Motion to suppress commenced.....Metzner, J. |          |                     |      |    |     |
| 5-25-77             | Hearing continued and concluded. Court to file Memo...Metzner, J.                                                                                                                                                                      |          |                     |      |    |     |
| 6-2-77              | Filed Deft. Michael Zilberberg's Notice of motion for application prohibiting the U.S. Atty from cross-examining the deft. on acts alleged to have taken place subsequent to 10-30-75 etc., Ret. 6-2-77 at 9:30 a.m.                   |          |                     |      |    |     |
| 6-2-77              | Filed Memo-Endorsed on Motion dated 6-2-77.- The motion is denied... So Ordered. Metzner, J. m/n                                                                                                                                       |          |                     |      |    |     |
| 6-6-77              | Filed Pltff. Request to Charge.                                                                                                                                                                                                        |          |                     |      |    |     |
| 6-2-77              | Jury impaneled and sworn trial begun.                                                                                                                                                                                                  |          |                     |      |    |     |
| 6-3-77              | Trial continued. The court strikes overt acts #3 and #4. Trial concluded, Deft. guilty on each of counts one and two. PSI Ordered. Sentence July 15th, 1977. Jurors polled-deft remanded. ....Metzner, J.                              |          |                     |      |    |     |
| 6-6-77              | Issued Remand..                                                                                                                                                                                                                        |          |                     |      |    |     |
| 6-7-77              | Filed memo-endorsed on motion dated 5-11-77- After conducting an evidentiary hearing this motion is denied...So Ordered. Metzner, J., m/n                                                                                              |          |                     |      |    |     |
| 6-20-77             | Filed CJA form #20 copy 5 appointing Joseph L. Stone as atty for deft                                                                                                                                                                  |          |                     |      |    |     |
| 6-20-77             | Filed CJA form #20 copy #2 approving payment to Joseph L. Stone as atty for deft dated 6-6-77...METZNER, J.                                                                                                                            |          |                     |      |    |     |
| 6-15-77             | Filed OPINION # 46016- DEft's move to suppress certain evidence in this case deft's were adequately advised of their Miranda rights by the agents. The motion is DENIED....So ordered METZNER, J. M/N                                  |          |                     |      |    |     |
| continued on page 3 |                                                                                                                                                                                                                                        |          |                     |      |    |     |

FINE AND RESTITUTION PAYMENTS

| DATE | RECEIPT NUMBER | CD NUMBER | DATE | RECEIPT NUMBER | CD NUMBER |
|------|----------------|-----------|------|----------------|-----------|
|      |                |           |      |                |           |
|      |                |           |      |                |           |
|      |                |           |      |                |           |
|      |                |           |      |                |           |



| DATE    | PROCEEDINGS (continued)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | V. EXCLUDABLE<br>(a) (b) |
|---------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|
| 7-19-77 | (Document No.)<br><i>Filed Transcript of record of proceedings, dated MAY 20, 1977</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                          |
| 7-29-77 | Filed JUDGMENT & COMMITMENT Deft with his atty present DEft produced on writ in Court. The deft is hereby committed to the custody of the Atty General or his authorized representative for imprisonment for a period of FIFTEEN (15) MONTHS on count (1) to run consecutively with the sentence imposed by Judge Neaher, United States District Judge for the Eastern District of N.Y. Imposition of Sentence on Count (2) is susperled and the deft is placed on probation for a period of FIVE (5) YEARS, subject to the standing probation order of this Court. Writ adjourned to September 1, 1977.....METZNER, J. copies issued |                          |
| 8-2-77  | Filed notice of appeal from the judgment entered on the 29th day of July 1977 (Copy mailed to deft's atty & U.S. Atty)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                          |
| 8-3-77  | Filed copy of J & C writ adj to Sept 1, 1977                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                          |



FELONY ☒ Misdemeanor ☐ LAST FIRST MIDDLE JUVENILE ☐ 02

U.S. TITLE SECTION

18:371  
18:2314

OFFENSES CHARGED

Consp. to transport forged securities  
Interstate transportation of forged securities

ORIGINAL COUNTS

1  
2

U.S. MAG  
CASE NO

BAIL • RELEASE

☐ Denied ☐ AMT ☐ Fugitive  
☐ Set ☐ Pers. Recog.  
\$ 000 ☐ PSA  
Date ☐ 10% Deposit  
☐ Bail Not Made ☐ Surety Bond  
☐ Status Changed (See Docket) ☐ Collateral  
☐ 3rd ☐ Other

## II. KEY DATES & INTERVALS

| ARREST or          | INDICTMENT                              | ARRAIGNMENT                          | TRIAL                                |
|--------------------|-----------------------------------------|--------------------------------------|--------------------------------------|
| U.S. Custody Began | High Risk Date                          | Information <input type="checkbox"/> | Trial Set For                        |
| Summons Served     | Indict. Waived <input type="checkbox"/> | 4-12-77                              | Voir Dire <input type="checkbox"/>   |
| First Appearance   | In Charging District                    | Superseding <input type="checkbox"/> | Trial Began <input type="checkbox"/> |
|                    |                                         | Indict/Info <input type="checkbox"/> | Trial Ended <input type="checkbox"/> |
|                    |                                         | 1st Plea                             |                                      |
|                    |                                         | 4-14-77                              |                                      |
|                    |                                         | Final Plea                           |                                      |
|                    |                                         |                                      |                                      |

SENTENCE  
Disposition of Charges  
☐ Convicted ☐ On All Charges  
☐ Acquitted ☐ On Lesser Offenses  
☐ Dismissed: ☐ WOP: ☐ WP  
☐ On Government's Motion

## MAGISTRATE

| DATE | INITIAL NO | INITIAL APPEARANCE                                | INITIAL NO | OUTCOME |
|------|------------|---------------------------------------------------|------------|---------|
|      |            | HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT  |            |         |
|      |            | HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW |            |         |
|      |            | WAIVED                                            |            |         |
|      |            | NOT WAIVED                                        |            |         |
|      |            | INTERVENING INDICTMENT                            |            |         |

Jeremy G. Epstein  
791-0036

## ATTORNEYS

George S. Messner H.L. JACOBS  
16 Court St 401 Bway N.Y.C. 100  
Bklyn, N.Y. 11241 596-2596 431-3712

Michael Zilberberg-01

- 4-12-77 Filed Indictment. B/W Ordered.....Lasker, J.  
B/W Issued.
- 4-13-77 Filed affidavit for writ of H/C ad Pros. Issued & ret. 4/14/77.
- 4-14-77 Deft. (atty. George S. Meissner for arraignment only) pleads not guilty. Deft. continued remanded in lieu of bail fixed at \$20,000 cash or surety. Deft. produced on writ. Writ adjourned sine die. Writ vacated. Case assigned to Metzner, J. for all purposes.....Lasker, J.
- 4-18-77 Filed notice of appearance of G.S. Messner as atty for deft.
- 4-27-77 Filed notice of appearance of Howard L Jacobs as atty for deft
- 4-22-77 Pre-trial conference held, deft on a writ with counsel, The Court to hand opinion on question of bail. Writ adj ro 4-26-77 Trial set for June 1, 1977..METZNER, J.



DOCUMENT NO.

4-26-77 Pre-trial conference held as to deft. Mr. Howard Jacobs is now representing deft. Mr. George Messner withdraws as aty. for deft. Motion Granted. All motions by May 16, 1977 If deft makes bail the limits are extended to the State of Pa. The deft is to return to this district by Tuesday May 3, 1977 12 noon & thereafter is to report to the U.S. Marshal's office every Tuesday by 12 noon Trial June 1, 1977 ....METZNER, J.

4-27-77 Filed CJA Form #23 - Financial affid

4-25-77 Filed OPINION # 45827- Deft moves to reduce the bail, fixed by Judge Lasker in the sum of \$20,000 cash or surety by bond. Motion DENIED.....METZNER, J. M/N

4-27-77 Filed warrants for arrest of deft ex. 4-14-77

4-27-77 Filed appearance bond in the amount of \$20,000 dated 4-27-77

4-29-77 Filed W/H/C Ad Pros. Writ satisfied 4-27-77 McMahon, J

5-16-77 Filed affid & notice of motion for an order pursuant to the fifth Amendment to the U.S. Constitution & Rules 8 & 14 of the F.R.C.P. Suppressing all evidence made by deft to Govt. officials -for severance etc.

5-16-77 Filed memorandum of law in support of motions for severance and suppression statements

5-19-77 Filed Govt's affid in opposition to the motion of deft to suppress

5-19-77 Filed Govt's memorandum in opposition to deft's motion to suppress statements & for a severance

5-20-77 Filed motion by Gov't to amend title on this indictment and all other papers filed and to be filed shall read as:  
U.S.A. v. Michael Silverberg & Mordecai Silverberg is granted without opposition. Motion to suppress commenced.....Metzner, J.

5-25-77 Hearing continued and concluded. Court to file Memo....Metzner, J.

6-6-77 Filed Pltff's Request to Charge

6-2-77 Motion to sever granted. . . .  
severed. . . . , METZNER, J.

6-3-77 Jury impaneled and sworn, trial begun.... Metzner, J.

6-6-77 Trial continued.

6-7-77 Trial continued. Trial concluded. Deft. guilty on each of counts 1 and 2. Jury polled. PSI ordered. Sentence 7-22-77. Bail con't, conditioned that deft. report to U.S. Marshal's office every Tuesday and Friday @ 12 Noon... Metzner, J.

## FINE AND RESTITUTION PAYMENTS

| DATE | RECEIPT NUMBER | C.D. NUMBER | DATE | RECEIPT NUMBER | C.D. NUMBER |
|------|----------------|-------------|------|----------------|-------------|
|      |                |             |      |                |             |
|      |                |             |      |                |             |
|      |                |             |      |                |             |
|      |                |             |      |                |             |



MORDECAI SILVERBERG

77

261

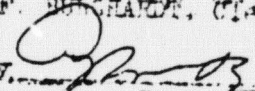
Sheet No.

10

| DATE    | PROCEEDINGS (continued)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | V. EXCLUDABLE DELA |     |     |
|---------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|-----|-----|
|         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | (a)                | (b) | (c) |
|         | (Document No.)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                    |     |     |
| 6-7-77  | Filed Memo-endorsed on motion dated 5-16-77- After conducting an evidentiary hearing the motion to suppress is denied. The motion for a severance is denied without prejudice or renewal on the date set for trial....So Ordered. Metzner.J. m/n                                                                                                                                                                                                                                                                                                                                          |                    |     |     |
| 6-15-77 | Filed OPINION #46016- Deft's move to suppress certain evidence in this case. Deft's were adequately advised of their Miranda rights by the agents The motion is DENIED .....METZNER,J. M/N                                                                                                                                                                                                                                                                                                                                                                                                |                    |     |     |
| 7-12-77 | Filed affid & order to extend bail limits permitting deft to travel on July 13, 1977 to the District of N.J. & to return to the S.D.N.Y. the same day....METZNER,J. M/N                                                                                                                                                                                                                                                                                                                                                                                                                   |                    |     |     |
| 7-19-77 | Filed Transcript of record of proceedings, dated MAY 20, 25 1977                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                    |     |     |
| 7-29-77 | Filed JUDGMENT & COMMITMENT - Deft (atty present) The deft is hereby committed to the custody of the Atty General or his authorized representative for imprisonment for a period of FIFTEEN (15) MONTHS on count 1. Imposition of Sentence on count (2) is suspended & the deft is placed on probation for a period of FIVE (5) YEARS subject to the standing probation order of this Court. The deft is continued on present bail until 4 PM this date at which time the deft is to post new bail in the amount of \$20,000 cash or surety pending appeal..... METZNER,J. issued co pies |                    |     |     |
| 7-29-77 | Filed notice of appeal from the Judgment entered on the 29th day of July 1977 (co py to deft & U.S.Att'y)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                    |     |     |

A. FROM COURT

RAULDA M. HUGHES, CLERK

By  Deputy Clerk





UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
UNITED STATES OF AMERICA,

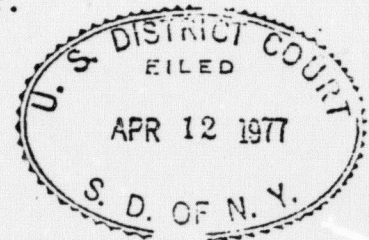
-v-

MICHAEL ZILBERBERG and  
MORDECAI ZILBERBERG,

Defendants.

77 CRIM. 0234  
INDICTMENT

77 Cr.



-----x  
The Grand Jury charges:

1. From on or about the 1st day of June, 1975, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, MICHAEL ZILBERBERG and MORDECAI ZILBERBERG, the defendants, and Natale Lipari and Isiah Crutch, named herein as co-conspirators but not as defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other, and with others to the Grand Jury known and unknown, to commit an offense against the United States, to wit, a violation of Section 2314 of Title 18, United States Code.

2. It was part of said conspiracy that the defendants and their co-conspirators, with unlawful and fraudulent intent, would and did transport and cause to be transported in interstate and foreign commerce falsely made, forged, and counterfeited securities, knowing the same to have been falsely made, forged, and counterfeited.



OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

1. On or about July 25, 1975, MICHAEL ZILBERBERG, the defendant, met co-conspirator Isiah Crutch at 315 W. 57th Street, New York, N.Y.

2. On or about August 15, 1975, co-conspirator Isiah Crutch gave MICHAEL ZILBERBERG, the defendant, one hundred counterfeit Bankers Trust Company official checks, having an aggregate face value of \$1,750,000.

3. On or about August 15, 1975, MICHAEL ZILBERBERG, the defendant, showed one hundred counterfeit Bankers Trust Company official checks, having an aggregate face value of \$1,750,000, to MORDECAI ZILBERBERG, the defendant.

4. On or about August 25, 1975, MICHAEL ZILBERBERG, and MORDECAI ZILBERBERG, the defendants, attended a meeting at a bar on Bay Parkway between 55th and 56th Streets, Brooklyn, New York.

5. On or about August 27, 1975, MICHAEL ZILBERBERG, the defendant, handed ninety-five counterfeit Bankers Trust Company official checks to co-conspirator Natale Lipari.

(Title 18, United States Code, Section 371.)



SECOND COUNT

The Grand Jury further charges:

On or about August 27, 1975, in the Southern District of New York, MICHAEL ZILBERBERG and MORDECAI ZILBERBERG, the defendants, unlawfully, wilfully, and knowingly, and with unlawful and fraudulent intent, did transport and cause to be transported in interstate commerce, from New York to Washington, D.C., falsely made, forged, and counterfeited securities, to wit, approximately ninety-five checks drawn on the Bankers Trust Company, New York, New York, knowing the same to be falsely made, forged, and counterfeited,  
(Title 18, United States Code, Sections 2314 and 2.)

Joseph Feldman  
FOREMAN

Robert B. Fiske, Jr.  
ROBERT B. FISKE, JR.  
United States Attorney



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
UNITED STATES OF AMERICA, :

-against- :

MICHAEL SILBERBERG and :  
MORDECAI SILBERBERG, :

Defendants. :  
----- x

77 Cr. 264  
(CMM)

#46016

JUN 15 1977

METZNER, D. J.:

Defendants move to suppress certain evidence  
in this case.

After listening to the evidence, there is no  
doubt in my mind that the defendants' agreement with the  
FBI was to furnish it with information which came to the  
attention of the defendants concerning the criminal  
activities of other persons.

This agreement did not contemplate that the  
defendants themselves would engage in criminal activity.

Even if it did, it is incomprehensible that  
Michael Silberberg, when confronted by the agents on  
September 2, 1975, did not readily admit the transactions  
concerning the counterfeit bank checks. Instead, for  
about one-half hour he steadfastly maintained his innocence  
and lack of any knowledge concerning these transactions.

MICROFILM

JUN 15 1977



Both defendants were adequately advised of their Miranda rights by the agents. The motion is denied.

So ordered.

Dated: New York, N. Y.  
June 14, 1977

Charles H. Metzger  
U. S. D. J.



jpwc 1

## Charge of the Court

THE COURT: Miss Williams, ladies and gentlemen  
of the jury:

We have now reached the point in this trial when  
you are about to enter upon your final functions as jurors,  
which is, of course, one of the sacred duties of citizenship.  
You have given full attention to the evidence during the  
course of the trial, and I am certain that you will conduct  
your deliberations in the same fine spirit that you have so  
far displayed and, with impartiality and fairness, reach a  
just verdict in this case.

In our court system the functions of the judge  
and the functions of the jury are clearly defined. It is my  
duty to instruct you as to what the law is. It is your duty  
to accept the law as I state it to you. Just as I am the  
exclusive judge of the law, so you are the exclusive judges  
of the facts. You alone determine the credibility of the  
witnesses and the weight, effect and value that should be  
given to their testimony. It is up to you to determine from  
the evidence you have heard what the facts are in this case,  
and from those facts decide whether the defendant has  
violated the law.

This is a criminal prosecution in which the  
government is one party and the defendant is the other. The  
fact that the government is a party entitles it to no greater



jpwc 2

## Charge of the Court

and to no lesser consideration than any other party. It is entitled to the same consideration as given to the defendant, no more and no less.

This case must be decided within the scope of the charges against the defendant as contained in the indictment. But before discussing the law applicable to the charges in the indictment, let us consider some general principles which apply in every criminal case.

An indictment itself is not evidence. It merely describes the charges made against the defendant and may not be considered by you as evidence of the guilt of the defendant. Nor can the fact that a grand jury has found this indictment in any way detract from the presumption of innocence with which the law surrounds the defendant unless and until his guilt is proved beyond a reasonable doubt.

Each of the two counts which you will consider alleges the commission of a separate and distinct offense. It will be necessary for you to reach a verdict of guilty or not guilty as to each of the two counts of the indictment. You must consider and weigh the evidence separately as to each count. The fact that you may find the defendant guilty or not guilty of one of the offenses charged should not control or influence your verdict with respect to the other offense of which the defendant is charged.



1           The defendant Mordecai Silberberg is not  
2           being tried in this case. This should not be considered or  
3           discussed by you or influence you in any way in passing upon  
4           the guilt or innocence of Michael Silberberg who is now on  
5           trial before you.  
6

7           The defendant has denied the charges in the  
8           indictment. By his plea of not guilty, the defendant has put  
9           into issue every material fact alleged in the accusations  
10          brought against him. Accordingly, the government, having  
11          made the charge, has the burden of proving beyond a reasonable  
12          doubt each material element of each count of the indictment.  
13          This burden of proof never shifts. It remains upon the  
14          government throughout the entire trial and during your  
15          deliberations as jurors.

16          A defendant does not have to prove his  
17          innocence. He is presumed to be innocent, and this presumption  
18          is overcome only when you reach a conclusion from the  
19          evidence that his guilt has been established beyond a  
20          reasonable doubt.

21          Now, what is meant by a "reasonable  
22          doubt"? There is nothing mysterious about the term. It  
23          means, as the words themselves indicate, a doubt based upon  
24          reason and common sense which arises after consideration of  
25          all the evidence. Reasonable doubt is a doubt which



1 would cause reasonable persons to hesitate to act in matters  
2 of importance to themselves. It is not a vague, speculative,  
3 imaginary something, and a person may not be convicted on mere  
4 suspicion and conjecture. On the other hand, a reasonable  
5 doubt does not exist merely because a juror does not wish to  
6 perform an unpleasant duty. A reasonable doubt may arise not  
7 only from the evidence produced but also from a lack of  
8 evidence. A defendant may also rely upon evidence brought  
9 out on cross-examination of any of the witnesses who have  
10 testified on behalf of the government. He may raise a  
11 reasonable doubt in your mind as to the existence of one or  
12 more of the essential elements of a crime without affirmative-  
13 ly presenting his version of all or any of the facts. This  
14 is so because the law does not impose upon a defendant a  
15 duty to produce any evidence.  
16

17 The law does not compel a defendant to take the  
18 witness stand and testify, and no presumption of guilt may  
19 be raised and no inference of any kind may be drawn from the  
20 failure of a defendant to testify.

21 It is not necessary for the government to prove  
22 the guilt of the defendant beyond any possible doubt. Proof  
23 is usually not a matter of mathematical or absolute certainty.  
24 In the nature of things it cannot be, but to sustain a  
25 conviction there must be such proof as satisfies your reason  
as intelligent people, beyond any reasonable doubt, that the



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## Charge of the Court

defendant is guilty as charged. If you do not have a reasonable doubt of the defendant's guilt as to the material elements of the charge, then you should return a verdict of guilty on that count. If, on the other hand, you do have a reasonable doubt as to the defendant's guilt as to any of the material elements of the crime charged, then you must return a verdict of not guilty as to that count.

You will be considering two counts, a conspiracy count and a substantive count. Substantive counts and conspiracy counts are governed by different legal principles. Generally speaking, a substantive count charges violation of a law which condemns specific conduct as illegal -- for example, interstate transportation of counterfeit securities. On the other hand, in a conspiracy count the offense charged is an agreement or understanding of two or more persons to commit a violation of a particular substantive law.

The first count in the indictment is the conspiracy count. It charges that from June 1, 1975 up to April 12, 1977, Michael Silberberg, Mordecai Silberberg, Natale Lipari, and Isiah Crutch wilfully and knowingly conspired to violate Section 2314 of Title 18 of the United States Code. It is alleged that as part of the conspiracy the defendants unlawfully, wilfully and knowingly would transport in interstate commerce forged and counterfeited



1 jpwc 6

Charge of the Court

2 securities knowing them to have been forged and counterfeited.

3 I instruct you as a matter of law that the  
4 bank checks involved here are securities.

5 Now, what is a conspiracy? It is a combination  
6 or agreement of two or more persons by concerted action to  
7 accomplish a criminal or unlawful purpose, and one or more  
8 of the persons who are members of the conspiracy does any  
9 act to effect or further the object of the conspiracy. It  
10 is a partnership in criminal purposes in which each member  
11 becomes the agent of every other member and is a crime in  
12 itself.

13 To prove a conspiracy here, the evidence must  
14 show beyond a reasonable doubt the existence of each one of  
15 the following elements:

16 First, that the conspiracy described was formed  
17 and existing at or about the time alleged;

18 Second, that it was part of the conspiracy to  
19 transport in interstate commerce forged and counterfeited  
20 securities knowing them to have been forged and counterfeited;

21 Third, that the defendant knowingly and wilfully  
22 became a member of the conspiracy; and

23 Fourth, that one of the conspirators thereafter  
24 knowingly committed at least one of the overt acts charged in  
25 the indictment at or about the time alleged;



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## Charge of the Court

Fifth, that such overt act was committed in furtherance of some object or purpose of the conspiracy as charged.

As to the formation of a conspiracy, it is not necessary that there be proof that the participants met together and entered into a formal or written agreement, or that they directly stated between themselves what their object or purpose was to be or the details of the plans or the means by which the purpose was to be achieved. Indeed, it would be extraordinary were the members of a conspiracy to set forth all the actual details of their arrangements in a formal and written agreement. When persons in fact embark together upon a criminal conspiracy, much is often unexpressed, much is left to unwritten understanding. Generally, such a criminal conspiracy is a matter of inference, deduced from the acts and statements of the alleged conspirators.

What the evidence must show in order to establish that a conspiracy existed is that the members in some way or other, positively or tacitly, came to a mutual understanding to engage in a common and unlawful plan to violate the law by transporting in interstate commerce counterfeited securities. In determining whether or not there was an unlawful agreement, you may judge the acts and conduct of each of the alleged conspirators as a whole and the



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## Charge of the Court

reasonable inferences to be drawn from such evidence.

If you satisfy yourselves beyond a reasonable doubt that the conspiracy as alleged in the indictment existed, then you must determine beyond a reasonable doubt whether the defendant knowingly and wilfully was an active participant in the unlawful plan with the intention of furthering its objectives. Mere knowledge by a defendant of an illegal act on the part of some other defendant or alleged co-conspirator is not sufficient. Merely acting in a way which incidentally furthers the purpose of a conspiracy without knowledge that a conspiracy exists does not make a person a member of the conspiracy.

You may find that the defendant acted knowingly and wilfully if he acted voluntarily and purposefully and with specific intent to do something which the law forbids; that is to say, that he must have acted with evil motive or bad purpose to disobey or to disregard the law and not because of negligence, mistake, inadvertence or other innocent reason.

The defendant contends that he engaged in this activity pursuant to an arrangement that he had with the FBI. If you find that his actions were sanctioned by such an arrangement, then the defendant could not have had the necessary intent to have violated the law.



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## Charge of the Court

It is obviously impossible to ascertain or prove directly what a person knew or intended. You cannot look into a person's mind and see what his intentions were or what he knew. But a careful and intelligent consideration of the facts and circumstances shown by the evidence in any given case as to a person's actions and statements enables us to infer with a reasonable degree of certainty and accuracy what his intentions were in doing or not doing certain things and the state of his knowledge.

If a defendant with knowledge of the specific object and purpose of a plan intentionally encourages, advises or assists the scheme for the purpose of furthering it, he thereby becomes a knowing and wilful participant; he thereby becomes a conspirator.

The guilt of a conspirator is not governed by the extent of his participation. It is not required that each of the conspirators participate in or have knowledge of all of its operations. He may join at any point in its progress and be held responsible for all that may be or has been done.

In determining whether or not the defendant was a member of the conspiracy, you may consider evidence of his own acts, statements and conduct as well as evidence of the acts, statements and conduct of other alleged co-



1 conspirators and the reasonable inferences to be drawn from  
2 such evidence.  
3

4 The indictment alleges that the conspiracy  
5 commenced on or about June 1, 1975 and continued until  
6 April 12, 1977. The government is not required to prove  
7 that the alleged conspiracy existed over the whole course of  
8 time set out in the indictment. It is sufficient if you find  
9 that any time within that period all of the elements of the  
10 alleged conspiracy have been proven to your satisfaction  
11 beyond a reasonable doubt.

12 The fact that the government may not have proved  
13 that the conspiracy was carried on as early or as long as  
14 the indictment alleges is not of any importance, so far as  
15 the elements of the crime are concerned.

16 The next element that must be proved on this  
17 issue of conspiracy is the requirement of an overt act. You  
18 may not find the defendant guilty of conspiracy unless you  
19 are convinced beyond a reasonable doubt that one of the  
20 conspirators knowingly committed one of the overt acts  
21 charged in the indictment. The government need not prove the  
22 commission of all of the overt acts charged in the indictment.  
23 By the term "overt act" is meant any act knowingly done by  
24 one of the conspirators in an effort to effect or accomplish  
25 some object or purpose of the conspiracy. The overt act need



1 jpwc 11

Charge of the Court

2 not be criminal in nature if considered separately and apart  
3 from the conspiracy. It may be as innocent as the act of  
4 a man walking across the street or using the telephone. The  
5 overt acts referred to in the indictment are:

6 (1) On or about July 25, 1975, Michael  
7 Silberberg, the defendant, met co-conspirator Isiah Crutch  
8 at 315 West 57th Street, New York, New York.

9 (2) On or about August 15, 1975, co-conspirator  
10 Isiah Crutch gave Michael Silberberg, the defendant, 100  
11 counterfeit Bankers Trust Company official checks, having  
12 an aggregate face value of \$1,750,000.

13 (3) On or about August 27, 1975, Michael  
14 Silberberg, the defendant, handed 95 counterfeit Bankers  
15 Trust Company official checks to co-conspirator Natale  
16 Lipari.

17 Once you have determined that the offense has  
18 been established under the guidelines I have just given you,  
19 then the crime of conspiracy is complete.

20 Furthermore, at this point the success or failure  
21 of the conspiracy to accomplish the common object or purpose  
22 is immaterial.

23 We come now to Count 2 of this indictment, which  
24 is the substantive count. This count charges Michael  
25 Silberberg with violating Section 2314 of Title 18 of the



## Charge of the Court

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As to the first element, it must be proven



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## Charge of the Court

beyond a reasonable doubt that the checks drawn on the Bankers Trust Company were forged or counterfeited. It has been stipulated that the checks in fact were not genuine obligations of the Bankers Trust Company. This would make them counterfeit securities.

The second element to be proved beyond a reasonable doubt is that at the time of the securities' alleged transportation, the defendant knew that they had been counterfeited.

The third element to be proven beyond a reasonable doubt is that on or about August 27, 1975, the defendant knowingly and wilfully transported the securities in question from New York to Washington, D.C.

What I have said previously concerning the definitions of the words "knowingly and wilfully" when discussing the conspiracy count in the indictment applies equally as well here. However, it is not necessary for the government to show that the defendant physically transported the securities from New York to Washington, D.C. This element of the offense is satisfied if you find beyond a reasonable doubt that the defendant, knowing the securities to have been forged or counterfeited, gave them to another to dispose of without limitation as to where the sale was to be made, and the other person took them across state lines.



1           The guilt of the defendant may be established  
2 without proof that he himself actually did every act con-  
3 stituting the offense charged in Count 2. This is so because  
4 anyone who knowingly aids, abets, counsels, induces or  
5 procures the commission of a crime against the United States  
6 is punishable as a principal. In order for the defendant to  
7 aid or abet another to commit a crime, it is necessary that  
8 he wilfully associate himself in some way with the criminal  
9 venture, knowing the essential elements of the offense as  
10 I have outlined them for you, that he wilfully participate  
11 in it as something that he wishes to bring about and that  
12 he wilfully seek by some action of his to make it  
13 succeed.  
14

15           Mere presence and guilty knowledge on the part  
16 of the defendant that a crime is being committed is not  
17 sufficient, unless you are also convinced beyond a reasonable  
18 doubt that the defendant was doing something to forward the  
19 crime; that he was a participant rather than merely a knowing  
20 spectator.

21           This trial has been a short one, and you have  
22 heard the summations of counsel in which they pointed out  
23 the various portions of the proof upon which they  
24 say you should rely to render a verdict in  
25 favor of their client. I see no reason to further detail



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## Charge of the Court

the contentions of the parties or the specific proof to substantiate those contentions.

In determining the guilt or innocence of a defendant, you must decide that question solely from the evidence you heard from the witness stand and the exhibits that have been placed before you. The summations of counsel which you have heard are not to be considered as evidence but only as arguments to you as to what counsel feel you should find from the evidence.

In determining the issues in this case, it is your recollection of the testimony that is to control and not that of counsel.

If during the course of the trial the Court sustained an objection by one counsel to a question asked by the examining counsel, you are to disregard the question and any alleged facts contained in the question, and you may not speculate as to what the answer would have been. If the question was asked and an answer given by the witness and I have then stricken the answer from the record, you are to disregard both the question and the answer in your deliberations.

In your search for the truth you must use plain, everyday common sense. You must not be governed by sympathy, bias or prejudice. You have seen the witnesses on the stand



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## Charge of the Court

and observed their manner of giving testimony. How did the witnesses impress you? Did they appear to be testifying frankly, candidly and fairly? In determining what degree of credit you should give a witness's testimony, you may consider his conduct, his manner of testifying, and his interest in the outcome of the trial. You should also consider his relationship to the government or to the defendant, his bias or impartiality, and any motive he may have to testify falsely.

It does not necessarily follow, of course, that because a person is interested in the outcome he is incapable of telling a truthful version of an occurrence. If you believe that a witness wilfully testified falsely to any material fact, you may disregard his testimony altogether, or you may accept that portion of his testimony which you believe worthy of credence. What you accept or reject as credible evidence is for you to determine. But you may not go outside the evidence to speculate as to the facts.

The quality of the testimony of the particular witnesses, regardless of who calls them, rather than the quantity of the witnesses, is the test to be used in arriving at your decision. There is no presumption that the witnesses for the government are more or less truthful or credible than the witnesses produced by the defendant. You should consider



1 a witness's entire testimony, his direct examination, his  
2 cross-examination and his redirect examination. You should  
3 consider the strength or weakness of his recollection in the  
4 light of all the testimony and attendant circumstances in the  
5 case. Inconsistencies or discrepancies in the testimony of  
6 a witness or between the testimony of different witnesses may  
7 or may not cause you to discredit such testimony. They may or  
8 may not be explainable. Two or more persons witnessing an  
9 incident or transaction may see or hear it differently.  
10 Innocent misrecollection, like failure of recollection, is not  
11 an unusual experience. In weighing the effect of a discrepancy  
12 consider whether it pertains to a matter of importance or to  
13 an unimportant detail and whether the discrepancy results  
14 from innocent error or wilful falsehood.  
15

16 You have heard testimony from government agents  
17 that the defendant made certain statements to these agents.  
18 If you find that a defendant did make the statement  
19 attributed to him, then you may give that statement such  
20 weight as you believe it deserves, depending on the circum-  
21 stances surrounding the giving of the statement as you  
22 believe existed at the time.

23 You may call for any exhibits which you desire  
24 to see in conjunction with your deliberations. You may call  
25 for a reading of any portion of the reporter's notes of the



1 evidence or any portion of this charge.

2           You are instructed that the question of possible  
3 punishment of the defendant in the event of conviction is  
4 of no concern to the jury and should not in any sense enter into  
5 or influence your deliberations. The duty of imposing sentence in  
6 the event of conviction rests exclusively upon the Court.  
7 The function of the jury is to weigh the evidence in the  
8 case and determine the guilt or innocence of a defendant  
9 solely upon the basis of such evidence.

10           I have sought to avoid any comments which might  
11 suggest that I have personal views on the evidence or that  
12 I have any opinion as to the guilt or innocence of the  
13 defendant, and you are not to assume that I have any such  
14 views or opinion. This charge is given to you solely to  
15 instruct you as to the law applicable to the case. The  
16 actions of the judge during the trial in granting or denying  
17 motions or in ruling on objections by counsel or in state-  
18 ments to counsel or in attempting to clearly set forth the  
19 law in these instructions -- they are not to be taken by you  
20 as any indication of any determination of the issues of fact.  
21 These matters and the actions of the Court relate to the  
22 procedure in law. You, the members of the jury, determine the  
23 facts.

24           There are twelve members of this jury, and all of  
25 you must agree upon any verdict you reach as to any count in  
the indictment.



1 This case is obviously an important one to the  
2 defendant and it is equally important to the government.  
3 I am submitting it to you in complete confidence that you  
4 will comply with your oath as jurors and decide the case  
5 fairly and impartially and without fear or favor.  
6

7 If there are any exceptions to the charge, I  
8 will take them in the robing room. Mr. Brackley?

9 MR. BRACKLEY: Just one, Judge.

10 (In the robing room)

11 MR. BRACKLEY: I would except to that portion of  
12 the charge wherein you indicate that the defendant need not  
13 have knowledge that the securities were being transported  
14 interstate.

15 THE COURT: Exception noted.

16 MR. EPSTEIN: Government has no exceptions.

17 (In open court)

18 THE COURT: At this time, Mrs. Rice and Mrs.  
19 Palasso, you leave us. You do not participate in the  
20 deliberations. If you have anything in the jury room, you  
21 can please take it. Thank you very much.

22 (The alternate jurors left the courtroom.)

23 (The marshals were duly sworn.)

24 THE COURT: The jury may retire to commence  
25 deliberations.



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2 THE CLERK: The court is about to charge  
3 the jury. If there are any spectators who wish to  
4 leave the courtroom they may do so now or remain seated  
5 until the completion of the court's charge.

6 Would the marshal please lock the door.

7 CHARGE OF THE COURT

8 (Metzner, J.)

9 THE COURT: Mr. Ward, ladies and gentlemen  
10 of the jury:

11 We have not reached the point in this trial  
12 when you are about to enter upon your final function  
13 as jurors, which is, of course, one of the sacred  
14 duties of citizenship.

15 You have given careful attention to the  
16 evidence during the course of the trial, and I am cer-  
17 tain that you will conduct your deliberations in the  
18 same fine spirit that you have so far displayed and  
19 with impartiality and fairness reach a just verdict in  
20 this case.

21 In our court system the functions of the  
22 judge and the functions of the jury are clearly defined.  
23 It is my duty to instruct you as to what the law is;  
24 it is your duty to accept the law as I state it to you.  
25 Just as I am the exclusive judge of the law, so you are



1           the exclusive judges of the facts.       You alone deter-  
2           mine the credibility of the witnesses and the weight,  
3           effect and value to be given to their testimony.   It  
4           is up to you to determine from the evidence you have  
5           heard what the facts are in this case, and from those  
6           facts decide whether the defendant has violated the  
7           law.  
8

9                       This is a criminal prosecution in which  
10          the government is one party and the defendant is the  
11          other.     The fact that the government is a party entitles  
12          it to no greater and to no lesser consideration than  
13          the other party.     It is entitled to the same considera-  
14          tion as given to the defendant, no more and no less.

15                      This case must be decided within the scope  
16          of the charges against the defendants as contained in  
17          the indictment, but before discussing the law applic-  
18          able to the charges in the indictment, let us consider  
19          some general principles which apply in every criminal  
20          case.

21                      An indictment itself is not evidence.     It  
22          merely describes the charges made against the defendant  
23          and may not be considered by you as evidence of the  
24          guilt of a defendant.     Nor can the fact that the grand  
25          jury has found this indictment in any way detract from



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2       the presumption of innocence with which the law surrounds  
3       a defendant unless and until his guilt is proved beyond  
4       a reasonable doubt.

5               Each of the two counts which you will con-  
6       sider alleges the commission of a separate and distinct  
7       offense.     It will be necessary for you to reach  
8       a verdict of guilty or not guilty as to  
9       each of the two counts of the indictment.     You must  
10      consider and weigh the evidence separately as to each  
11      count.     The fact that you may find the defendant guilty  
12      or not guilty of one of the offenses charged should not  
13      control or influence your verdict with respect to  
14      the other offense of which the defendant is charged.

15              The defendant Michael Silberberg is not  
16      being tried in this case.     This should not be considered  
17      or discussed by you or influence you in any way in pass-  
18      ing upon the guilt or innocence of Mordecai Silberberg  
19      who is now on trial before you.

20              The defendant has denied the charges in  
21      the indictment.     By his plea of not guilty the defend-  
22      ant has put into issue every material fact alleged in  
23      the accusations brought against him.     Accordingly, the  
24      government, having made the charge, has the burden of  
25      proving beyond a reasonable doubt each material element



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2 of each count of the indictment. This burden of proof  
3 never shifts. It remains with the government through-  
4 out the entire trial and during your deliberations as  
5 jurors. A defendant does not have to prove his inno-  
6 cence. He is presumed to be innocent, and this pre-  
7 sumption is overcome only when you reach a conclusion  
8 from the evidence that his guilt has been established  
9 beyond a reasonable doubt.

10 What is meant by a reasonable doubt? There  
11 is nothing mysterious about the term. It means, as  
12 the words themselves indicate, a doubt based upon reason  
13 and common sense which arises after consideration of  
14 all the evidence. Reasonable doubt is a doubt which  
15 could cause reasonable persons to hesitate to act  
16 in matters of importance to themselves. It is not a  
17 vague, speculative, imaginary something, and a person  
18 may not be convicted on mere suspicion or conjecture.

19 On the other hand, a reasonable doubt does  
20 not exist merely because a juror does not wish to  
21 perform an unpleasant duty. A reasonable doubt may  
22 arise not only from the evidence produced but also from  
23 a lack of evidence. A defendant may also rely upon  
24 evidence brought out on cross examination of any of  
25 the witnesses who have testified on behalf of the govern-



ment. He may raise a reasonable doubt in your minds as to the existence of one or more of the essential elements of the crime without affirmatively presenting his version of all or any of the facts. This is so because the law does not impose upon a defendant a duty to produce any evidence. The law does not compel a defendant to take the witness stand and testify, and no presumption of guilt may be raised, and no inference of any kind may be drawn from the failure of a defendant to testify.

Now, it is not necessary for the government to prove the guilt of a defendant beyond any possible doubt. Proof is usually not a matter of mathematical or absolute certainty. In the nature of things it cannot be. But to sustain a conviction beyond a reasonable doubt there must be such proof as satisfies your reason as intelligent people that the defendant is guilty as charged.

If you do not have a reasonable doubt of the defendant's guilt as to the material elements of the charge, then you should return a verdict of guilty on that count. If, on the other hand, you do have a reasonable doubt as to the defendant's guilt as to any of the material elements of the crime charged, then



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2       you must return a verdict of not guilty as to that  
3       count.

4               You will be considering two counts, a  
5       conspiracy count and a substantive count. Substantive  
6       counts and conspiracy counts are governed by different  
7       legal principles. Generally speaking, a substantive  
8       count charges violation of a law which condemns specific  
9       conduct as illegal. For example, interstate  
10      transportation of counterfeit securities.

11             On the other hand, in a conspiracy count the  
12      offense charged is an agreement or understanding of two  
13      or more persons to commit a violation of a particular sub-  
14      stantive law.

15             The first count in the indictment here is  
16      the conspiracy count. It charges that from June 1,  
17      1975 up to April 12, 1977 Michael Silberberg, Mordecai  
18      Silberberg, Natale Lipari and Isaiah Crutch wilfully  
19      and knowingly conspired to violate Section 2314 of  
20      Title 18 of the United States Code. It is alleged that  
21      as part of the conspiracy the defendants unlawfully,  
22      wilfully and knowingly would transport in interstate  
23      commerce forged and counterfeited securities knowing  
24      them to have been forged and counterfeited.

25             I instruct you as a matter of law that the



2        bank checkks involved here are securities.

3                    What is a conspiracy.        It is a combination  
4        or an agreement of two or more persons by concerted  
5        action to accomplish a criminal or unlawful purpose,  
6        and one or more of the persons who are members of the  
7        conspiracy does any act to effect or further the object  
8        of the conspiracy.

9                    It is a partnership in criminal purposes  
10       in which each member becomes the agent of every other  
11       member and it is a crime in itself.

12                   To prove a conspiracy here the evidence  
13       must show beyond a reasonable doubt the existence of each  
14       one of the following elements:

15                   First, that the conspiracy described was  
16       formed and existing at or about the time alleged.

17                   Second, that it was part of the conspiracy  
18       to transport in interstate commerce forged and  
19       counterfeited securities knowing them to be forged and  
20       counterfeited.

21                   Third, that the defendant knowingly and wil-  
22       fully became a member of the conspiracy.

23                   Fourth, that one of the conspirators there-  
24       after knowingly committed at least one of the overt  
25       acts in the indictment at or about the time alleged.



1  
2 Fifth, that such overt act was committed in  
3 furtherance of some object or purpose of the conspiracy.

4 Now, as to the formation of a conspiracy, it  
5 is not necessary that there be proof that the  
6 participants met together and entered into a formal or  
7 written agreement or that they directly stated between  
8 themselves what their object or purpose was to be, or  
9 the details of the plans, or the means by which the  
10 purpose was to be achieved. Indeed, it would be  
11 extraordinary were the members of the conspiracy to  
12 set forth all the actual details of their arrangements  
13 in a formal and written agreement.

14 When persons in fact embark together upon  
15 a criminal conspiracy much is left unexpressed, much  
16 is left to unwritten understanding. Generally,  
17 such a criminal conspiracy is a matter of inference to  
18 be deduced from the acts and statements of the alleged  
19 conspirators.

20 What the evidence must show in order to  
21 establish that a conspiracy existed is that the members  
22 in some way or other positively or tacitly came to a  
23 mutual understanding to engage in a common and unlawful  
24 plan to violate the law by transporting in interstate  
25 commerce counterfeited securities. In determining



2 whether or not there was an unlawful agreement, you  
3 may judge the acts and conduct of each of the alleged  
4 conspirators as a whole and the reasonable inferences  
5 to be drawn from such evidence.

6 If you satisfy yourselves beyond a reason-  
7 able doubt that the conspiracy as alleged in the  
8 indictment existed, then you must determine beyond a  
9 reasonable doubt whether the defendant knowingly and  
10 wilfully was an active participant in the unlawful plan  
11 with the intention of furthering its objectives.

12 Mere knowledge by a defendant of an illegal  
13 act on the part of some other defendant or alleged  
14 co-conspirator is not sufficient. Merely acting in  
15 a way which incidentally furthers the purpose of a  
16 conspiracy without knowledge that a conspiracy exists  
17 does not make a person a member of the conspiracy.

18 You may find that the defendant acted knowingly  
19 and wilfully if he acted voluntarily and purposefully  
20 with specific intent to do something which the law for-  
21 bids. That is to say, that he must have acted with  
22 evil motive or bad purpose to disobey or to disregard  
23 the law and not because of negligence, mistake, in-  
24 advertence or other innocent reason.

25 It is obviously impossible to ascertain or



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2       prove directly what a person knew or intended.       You  
3       cannot look into a person's mind and see what his  
4       intentions were or what he knew, but a careful and intelli-  
5       gent consideration of the facts and circumstances shown  
6       by the evidence in any given case as to a person's actions  
7       and statements enables us to infer with a reasonable de-  
8       gree of certainty and accuracy what his intentions were  
9       in doing or not doing certain things, and the state  
10      of his knowledge.

11               If a defendant with knowledge of the specific  
12      object and purpose of a plan intentionally encourages,  
13      advises or assists the scheme for the purpose of  
14      furthering it he thereby becomes a knowing and wilful  
15      participant, he thereby becomes a conspirator.

16               The guilt of a conspirator is not governed  
17      by the extent of his participation.       It is not re-  
18      quired that each of the conspirators participate in or  
19      have knowledge of all of its operations.       He may  
20      join at any point in its progress and be held respon-  
21      sible for all that may be or has been done.

22               In determining whether or not the defendant  
23      was a member of the conspiracy, you may consider evidence  
24      of his own acts, statements and conduct, as well as the  
25      evidence of the acts, statements and conduct of other



2 alleged co-conspirators, and the reasonable inferences  
3 to be drawn from such evidence.

4 The indictment alleged that the conspiracy  
5 commenced on or about June 1, 1975 and continued to April  
6 12, 1977. The government is not required to prove that  
7 the alleged conspiracy existed over the whole course of  
8 time set out in the indictment. It is sufficient, if  
9 you find at any time within that period, all of the ele-  
10 ments of the alleged conspiracy have been proven to your  
11 satisfaction beyond a reasonable doubt. The fact  
12 that the government may not have proved that the conspiracy  
13 was carried on as early or as long as the indictment  
14 alleges is not of any importance so far as the elements  
15 of the crime are concerned.

16 The next elements that must be proven on this  
17 issue of conspiracy is the requirement of an overt act.  
18 You may not find a defendant guilty of conspiracy unless  
19 you are convinced beyond a reasonable doubt that one of  
20 the conspirators knowingly committed one of the overt  
21 acts alleged in the indictment. The government need not  
22 prove the commission of all of the overt acts charged  
23 in the indictment.

24 By the term "overt act" is meant any act  
25 knowingly done by one of the conspirators in an effort to



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effect or accomplish some object or purpose of the  
conspiracy. The overt act need not be criminal in  
nature if considered separately and apart from the  
conspiracy. It may be as innocent as the act of a man  
walking across the street or using a telephone.

The overt acts referred to in this in-  
dictment are:

1. On or about July 25, 1975 Michael Silberberg met co-conspirator Isaiah Crutch at 315 West 57th Street, New York.
  2. On or about August 15, 1975 co-conspirator Isaiah Crutch gave Michael Silberberg 100 counterfeit Bankers Trust Company official checks having an aggregate face value of \$1,750,000.
  3. On or about August 15, 1975 Michael Silberberg showed 100 counterfeit Bankers Trust Company official checks having an aggregate face value of \$1,750,000 to Mordecai Silberberg, the defendant here.
  4. On or about August 25, 1975 Michael Silberberg and Mordecai Silberberg, the defendant, attended a meeting at a bar at Bay Parkway between 55th and 56th Street in Brooklyn.
- Last, on or about August 27, 1975 Michael Silberberg handed 95 counterfeit Bankers Trust Company



official checks to conspirator Natale Lipari.

Once you have determined that the offense has been established under the guidelines I have just given you, then the crime of conspiracy is complete.

Furthermore, at this point the success or failure of the conspiracy to accomplish the common object or purpose is immaterial.

We come now to count 2 in this indictment, which is the substantive count. This count charges Mordecai Silberberg with violating Section 2314 of Title 18 of the United States Code. This section makes it a crime for any person knowingly and wilfully to transport in interstate commerce any forged or counterfeited securities knowing the securities to have been forged or counterfeited.

In particular, count 2 charges that on August 27, 1975 Mordecai Silberberg unlawfully, wilfully and knowingly transported in interstate commerce, from New York City to Washington, D.C., approximately 95 checks drawn on the Bankers Trust Company, New York, knowing these securities to have been forged and counterfeited.

In order for you to return a verdict of guilty on this count against the defendant you must be convinced



that each of the following three elements has been proven beyond a reasonable doubt.

First, that the checks drawn on the Bankers Trust Company in New York had been forged or counterfeited, not necessarily by the defendant.

Second, that at the time the securities were allegedly taken to Washington, D.C. the defendant knew that they had been forged or counterfeited.

Third, that on or about August 27, 1975 the defendant knowingly and wilfully transported these securities from New York to Washington, D.C.

Now, as to the first element it must be proven beyond a reasonable doubt that the checks drawn on the Bankers Trust Company were forged and counterfeited. It has been stipulated that the checks were in fact not genuine obligations of the Bankers Trust Company. This would make them counterfeit securities.

The second element to be proved beyond a reasonable doubt is that at the time of the securities' alleged transportation the defendant knew they had been counterfeited.

The third element to be proven beyond a reasonable doubt is that on August 27, 1975 the defendant knowingly and wilfully transported the securities in ques-



tion from New York to Washington, D.C.

What I have said previously concerning the definitions of knowingly and wilfully when discussing the conspiracy count in the indictment applies equally as well here.

However, it is not necessary for the government to show that the defendant physically transported the securities from New York to Washington, D.C. This element of the offense is satisfied if you find beyond a reasonable doubt that the defendant, knowing the securities to have been forged and counterfeited, gave them to another to dispose of without limitations as to where the sale was to be made and the other person took them across state lines.

The guilt of the defendant on count 2 may be established without proof that he himself actually did every act constituting the offense. This is so because anyone who knowingly aids, abets, counsels, induces or procures the commission of a crime against the United States is punishable as a principal.

In order for the defendant to aid or abet another to commit a crime it is necessary that he wilfully associate himself in some way with the criminal venture, knowing the essential elements of the offenses



as I have outlined them for you, that he wilfully participated in it as something he wishes to bring about, and that he wilfully seeks by some action of his to make it succeed. Mere presence and guilty knowledge on the part of a defendant that a crime is being committed is not sufficient unless you are also convinced beyond a reasonable doubt that the defendant was doing something to forward the crime, that he was a participant rather than merely just a knowing spectator.

This trial has been a short one and you have heard the summations of counsel in which they pointed out the various portions of the proof on which they say you should rely to render a verdict in favor of their client. I see no reason to further detail the contentions of the parties or the specific proof to substantiate those contentions.

In determining the guilt or innocence of a defendant, you must decide that question solely from the evidence you heard from the witness stand and the exhibits that have been placed before you.

The summations of counsel which you have heard are not to be considered as evidence but only as arguments to you as to what counsel feel you should find from the evidence.



2                    In determining the issues in this case, it  
3                    is your recollection of the testimony that is to control  
4                    and not that of counsel.

5                    If, during the course of the trial, the  
6                    court sustained an objection by one counsel to a question  
7                    asked by the examining counsel, you are to disregard the  
8                    question and any alleged facts contained in the question,  
9                    and you are not to speculate as to what the answer would  
10                   have been.

11                   If a question was asked and an answer given  
12                   by the witness, and I had then stricken the answer from  
13                   the record, you are to disregard both the question and  
14                   the answer in your deliberations.

15                   In your search for the truth you must use plain,  
16                   everyday common sense.      You must not be governed by  
17                   sympathy, bias or prejudice.

18                   You have seen the witnesses on the stand  
19                   and observed their manner of giving testimony.      How  
20                   did they impress you?      Did they appear to be testify-  
21                   ing frankly, candidly and fairly?      In determining what  
22                   degree of credit you should give a witness' testimony,  
23                   you may consider his conduct, his manner of testifying  
24                   and his interest in the outcome of the trial.      You  
25                   should also consider his relationship to the government,



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2       his bias or impartiality and any motive he may have to  
3       testify falsely.

4               It does not necessarily follow, of course,  
5       that because a person is interested in the outcome  
6       he is incapable of telling a truthful version of an  
7       occurrence.

8               If you believe that a witness has wilfully  
9       testified falsely as to any material fact, you may  
10      disregard his testimony altogether, or you may accept  
11      that part of his testimony which you believe worthy of  
12      credence.       What you accept or reject as credible  
13      evidence is for you to determine, but you may not go out-  
14      side the evidence to speculate as to the facts.

15              The quality of the testimony of the particu-  
16      lar witnesses rather than the quantity of witnesses is  
17      the test to be used in arriving at your decision.

18              You should consider the witness' entire  
19      testimony, his direct examination, his cross examination  
20      and his redirect examination.       You should consider  
21      the strength or weakness of his recollection in the  
22      light of all the testimony and attendant circumstances  
23      in the case.       Inconsistencies or discrepancies in the  
24      testimony of a witness or between the testimony of  
25      different witnesses may or may not cause you to dis-



1           ewa  
2           credit such testimony.

3                   Two or more persons witnessing an incident  
4           or a transaction may see or hear it differently.   Inno-  
5           cent misrecollection, like failure of recollection, is  
6           not an unusual experience.   In weighing the effect of  
7           a discrepancy, consider whether it pertains to a matter  
8           of importance or to an unimportant detail, whether  
9           the discrepancy results from innocent error or wilful  
10          falsehood.

11                   You will recall that Agent Parks was asked  
12          about statements under oath which he made prior to trial -  
13          and which the defendant claims appear to be inconsistent  
14          with his testimony at trial.   The witness here has  
15          affirmed making such prior statements, but has  
16          attempted to explain any discrepancy that you may think  
17          exists in the testimony.   You may, if you choose, con-  
18          sider these prior statements as bearing on the credi-  
19          bility of the witness.

20                   You have heard the testimony of a fingerprint  
21          expert called on behalf of the government.   How do you  
22          as laymen determine the facts from expert testimony?   You  
23          are to act in exactly the same way that you would appraise  
24          and determine the credibility of an ordinary witness as  
25          I have already outlined for you.   Ordinary witnesses



are allowed to tell you only what they see, hear or experience. An expert is also permitted to tell you his opinion by reason of his training and knowledge in his particular field.

As you well know, an opinion is something a witness forms in his own mind based on specific facts from which, using his judgment, training and experience, he draws certain conclusions. Of course, if you don't believe the facts which form the basis of the expert's opinion, then his opinion is valueless. But otherwise, you will treat the expert's opinion as evidence which you have heard. You may accept it or reject it, in whole or in part, and it is entirely up to you as to what you will do with his testimony and what credibility you will give to it.

You have heard testimony from Agent Parks that the defendant made certain statements to him. If you find that a defendant did make the statement attributed to him, then you may give that statement such weight as you believe it deserves, depending on the circumstances surrounding the giving of the statement as you believe existed at the time.

You may call for any exhibits which you desire to see in conjunction with your deliberations.



1           ewa  
2                   You may call for a reading of any portion  
3 of the reporter's notes of the evidence or any portion  
4 of this charge.

5                   You are instructed that the question of  
6 possible punishment of a defendant in the event of  
7 conviction is no concern of the jury and should not in  
8 any event enter into your deliberations.     The duty of  
9 imposing sentence in the event of conviction rests  
10 exclusively upon the court.     The function of the jury  
11 is to weigh the evidence in the case and determine the  
12 guilt or innocence of a defendant solely upon the basis  
13 of such evidence.

14                  I have sought to avoid any comments which might  
15 suggest that I have personal views on the evidence or  
16 that I have any opinion as to the guilt or innocence of  
17 the defendant.     You are not to assume that I have  
18 any such views or opinion.     This charge is given to  
19 you solely to instruct you as to the law applicable to  
20 this case.

21                  The actions of the judge during the trial  
22 in granting or denying of motions or ruling on objections  
23 by counsel, or in statements to counsel or in attempting  
24 to clearly set forth the law in these instructions, are  
25 not to be taken by you as any indication of any determina-



1 tions of the issues of fact. These matters, the  
2 actions of the court, relate to procedure and law. You,  
3 the members of the jury, determine the facts.  
4

5 There are 12 members of this jury, and all  
6 of you must agree upon any verdict you reach as to the  
7 defendant on any count in the indictment.

8 This case is obviously an important one  
9 to the defendant. It is equally important to the  
10 government. I am submitting it to you in complete  
11 confidence that you will comply with your roles as  
12 jurors and decide the case fairly and impartially and  
13 without fear or favor.

14 If there are any exceptions to the charge  
15 I will take them in the robing room.

16 Mr. Jacobs?

17 MR. JACOBS: No, your Honor.

18 THE COURT: Mr. Epstein?

19 MR. EPSTEIN: Yes, I have one minor one.

20 THE COURT: Let's take it up here.

21 (At the side bar.)

22 MR. EPSTEIN: Your Honor, I think one slip  
23 of the tongue. When you were referring to the expert's  
24 testimony you said he may give you his appearance. I  
25 think you meant his opinion.



1 hbsr

Moody - direct

18

2 in Washington, D. C. with a package of Bankers Trust  
3 Company checks.

4 Q Mr. Moody, I now direct your attention to  
5 September 2, 1975. Did there come a time on that day  
6 when you met Michael Silberberg?

7 THE COURT: Date?

8 MR. EPSTEIN: September 2, 1975, your Honor.

9 A That's correct.

10 Q Mr. Moody, can you tell the Court the circum-  
11 stances of that meeting, please?

12 A Circumstances of that meeting was that I  
13 contacted Michael Silberberg and told him I had to meet  
14 him that day and we met some place close to the New  
15 York office of the Federal Bureau of Investigation.

16 Q For the record, where is that?

17 A East 69th Street. We probably met at Park  
18 Avenue.

19 Q We, to whom are you referring?

20 A There were other agents at this meeting,  
21 Special Agent Ford Cole and Supervisor James Nelson.

22 After we met him, we went to a pizza parlor  
23 located on Lexington Avenue between 70th and 71st as  
24 I recall. We went to the back of the location, sat down and  
25 I asked him what he had done over the Labor Day weekend.

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Q What if anything did Michael Silberberg respond?

A At that time he said that he had been in Spring Valley, New York with his wife.

Q What if anything was said at that time?

A As soon as he said that, which we knew was not true, I advised him of his rights to remain silent, that he had access to an attorney or one could be provided to him, and then he was told --

Q Mr. Moody, could you put on the record everything you said to Mr. Silberberg with regard to his rights?

A I advised him of his rights to remain silent, that he didn't have to talk to us, that he could talk to us but he could stop any time he wanted to, that he had a right to an attorney, that if he couldn't afford an attorney, one could be provided for him.

Q Did you advise him that anything he said could be used against him?

A Oh, yes.

Q Mr. Moody, after you advised Mr. Silberberg of his rights, what if anything did he say in response?

A I don't recall at that time.

Q Was there subsequent conversation at this time with Mr. Silberberg?



1  
2 A Yes. We asked him again what he had done over  
3 the weekend.

4 Q What did he say?

5 A Then we also told him that we knew what he had  
6 been doing over the weekend, and Supervisor Nelson began  
7 talking to him at that time.

8 Q What did Mr. Nelson say?

9 A Told him that he had been lying to us, that  
10 we knew he was lying to us, that we knew what he had  
11 been doing, we knew that he had been dealing in checks  
12 in Canada, and that he had a choice at that time of whether  
13 to tell us what he had been doing and assisting us or  
14 that we would go to the United States Attorney with this  
15 information and take through the attorney legal action  
16 against him.

17 Q Mr. Moody, did you ever tell Mr. Silberberg  
18 on this occasion that he would not be prosecuted on the  
19 basis of the statements he made?

20 A No.

21 Q Did you ever tell Mr. Silberberg that if he  
22 didn't cooperate, he would be exposed as an informant  
23 and that he would be dead within 24 hours?

24 A No.

25 Q Mr. Moody, subsequent to the meeting on September



2nd, did Michael Silberberg agree to cooperate?

A He agreed to cooperate that day. As I recall. It was -- he said that he would tell us what is going on and gave us a general outline that day of what he had been doing with the Bankers Trust Company checks and we agreed to meet him the next day to start debriefing him on all information that he had.

Q Mr. Moody, between September 2nd and approximately September 16th, 1975, what activities did you engage in with regard to Michael Silberberg?

A After the meeting on September 2nd, we met on September 3rd in a hotel and started debriefing him on all the criminal activities that he had been involved in. At that same time, we obtained permission from him to electronically monitor his conversations both telephonically and/or all conversations with other individuals and we recorded his conversations with individuals he had been dealing with starting on September 3rd through September 16th. These conversations were both telephonic and he met people wearing a body recorder.

Q Mr. Moody, did you question Mr. Silberberg with regard to the Bankers Trust Company cashier's checks?

A Yes.

Q Can you tell us in very general terms what his



2 A In New York, the New York office.

3 Q To what squad were you assigned?

4 A I was assigned to one of the Organiz crime  
5 Squads in the New York office.

6 Q Mr. Parks, I now direct your attention to  
7 September 17, 1975.

8 Did you have occasion on the afternoon of  
9 September 17th to speak to Mordecai Silberberg?

10 A That is correct.

11 Q Can you tell us where you spoke to him and  
12 what you said?

13 A We spoke with Mordecai Silberberg at the  
14 offices of the Federal Bureau of Investigation.

15 Q Can you tell us what you said to him and what  
16 he said to you?

17 A Mordecai Silberberg --

18 THE COURT: Don't you think we ought to find  
19 out who was present first?

20 Q Who if anyone else was present?

21 A I am trying to think. The 17th was that  
22 first night. Myself, Jim Moody, Jim Nelson, I believe.  
23 And I can't recall the other people that were present.

24 THE COURT: Go ahead.

25 Q Mordecai Silberberg had just come to the FBI



office, correct?

A That's correct, his brother had called him.

Q What was the substance of your conversation on the evening of the 17th?

A That evening I told Mordecai Silberberg that we had information to the effect that his life could quite possibly be in danger.

Q What else did you say about this to him?

A I told him to talk to his brother about it. He said that he did not think that he was in any definitive danger at that time and that his brother was the one that had caused all the problems that he was in now.

Q What did you say in response to that?

A I told him that our information indicated that he in fact was also in trouble and could be killed for the activities, of the past activities of he and his brother.

Q Did you suggest that he stay in a hotel with you?

A We offered a hotel to both he and Michael Silberberg, and they talked with each other for a while and then they accepted it and Mordecai said, "As long as you are paying for the hotel, I will stay in the hotel."



2 Q What happened that evening?

3 A Nothing. They were transported to the hotel  
4 and we put Mordecai Silberberg's car in the FBI garage  
5 on 55th Street.

6 Q Mr. Parks, I now direct your attention to  
7 the following morning.

8 Did you have occasion to accompany Mordecai  
9 Silberberg to Brooklyn on that morning?

10 A Yes, we did.

11 Q Can you tell us who was there?

12 THE COURT: What day is this, the next day?

13 MR. EPSTEIN: Yes, September 18th.

14 Q Is that correct?

15 A Yes.

16 Q Can you tell us who was with you and how you  
17 traveled out to Brooklyn?

18 A Yes. Special Agent Walter Smith and myself  
19 followed Mordecai Silberberg to Brooklyn, the purpose of  
20 which that Silberberg was going to leave his car with a  
21 Mindy Lefkowitz, a friend of his who owned a garage over  
22 in Brooklyn.

23 Q Had Mordecai Silberberg previously told you  
24 that he wanted to leave the car in Brooklyn?

25 A He wanted to leave it with Mindy Lefkowitz



2 for the time being considering the fact that Mindy  
3 Lefkowitz had a lot of his other property at his garage  
4 and would hold it for him.

5 Q Did there come a time when Mordecai Silberberg  
6 met Mr. Lefkowitz in Brooklyn on the 18th?

7 A Yes, he met him at a little storefront res-  
8 taurant diner type, and it was on upper Flatbush Avenue,  
9 I can't recall the address. They were in there for  
10 about -- Special Agent Smith and myself stayed in the car  
11 and Silberberg and Lefkowitz were in the diner for about  
12 20 or 25 minutes, and then Silberberg came back to our  
13 car, the FBI unit, and we drove off.

14 Q What if anything did Mr. Silberberg say to  
15 you when he entered the car?

16 A As he entered the car, he said, "My God, you  
17 were right, Mindy told me that two guys were looking for  
18 me with guns."

19 Q Did he tell you anything else about that conver-  
20 sation?

21 A He told me that Mindy had said that two men  
22 had come by Mindy's garage and said, "Where is Marty?"  
23 Mindy said that he told the two guys that he didn't know  
24 where Marty was because he was looking for him himself,  
25 because he had a lot of his property, and the two guys



1                   hb:mg 60                   Parks-direct                   134  
2                   said to Mindy, "Well, if we find him first, nobody has  
3                   to look for him."

4                   Q           What happened after you went into the car;  
5                   where did you go?

6                   A           At that time Mordecai Silberberg changed his  
7                   mind, told us that he was willing to cooperate with us in  
8                   every way, and that he was glad that the information had  
9                   been verified by Mindy, that in fact somebody was looking  
10                  for him.

11                               So we went back to New York.

12                  Q           Did there come a time that evening when both  
13                  Silberberg Brothers were again put up at a hotel?

14                  A           Yes. They were-- we rented a room for them  
15                  at the Westbury Hotel.

16                  Q           Did there come a time when you obtained food  
17                  for them that evening?

18                  A           Yes, at dinnertime, both Michael and Mordecai  
19                  had strict religious dietary rules, and they advised us  
20                  that -- they advised us that they couldn't get the food  
21                  from Bernstein's Delicatessen when I was only like a block  
22                  away but it had to be at some restaurant down in the 30's  
23                  which was a kosher restaurant. So we went down to the kosher  
24                  restaurant, got them the meal, brought it back to them  
25                  and left.

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Q Mr. Parks, I now direct your attention to the following morning, September 19, 1975.

Did you have a conversation with Mordecai Silberberg that morning?

A Yes.

Q Who else was present?

A Special Agent Smith, again, and myself. And we were the ones that interviewed Mordecai that morning.

Q What did he say at the outset of your conversation?

A He told me that he had talked this situation over with his brother and asked me, you know, what I wanted to know.

Q Prior to that, had you advised him orally of his constitutional rights?

A I had not asked him any questions prior to that.

Q Did there come a time that morning when you advised him of his constitutional rights?

A Yes.

Q That was after he asked you what you wanted to know?

A Right.

Q Did you give to him a waiver of rights form?



1  
2 A Yes, I did.

3 Q Did he sign it?

4 A Yes, he did.

5 Q Prior to his signing it, what if anything  
6 did you say?

7 A He was trying to go over the possibilities of  
8 things that could happen to him. He was trying to find  
9 out what Michael had told us concerning any activities  
10 that he had taken part in, and he was trying to determine  
11 exactly what the government was going to do for him in  
12 the event that he did cooperate.

13 Q He asked you this before he signed the form?

14 A Yes, he did.

15 Q Did there come a time when he refused to sign  
16 the form?

17 THE COURT: He didn't say he signed it.

18 MR.EPSTEIN: I am going back to the point before  
19 he signed it, your Honor.

20 A When we first arrived there at the Westbury  
21 that morning, Mordecai Silberberg did not want to sign  
22 the form. He called Jim Moody and then as I recall it,  
23 he asked Special Agent Smith and myself to leave the room  
24 for a few minutes -- he talked it over with his brother,  
25 and then when Jim Moody got there, he had decided to sign

A63



the form.

He said, "I will tell you," he said, "I will tell you everything that I know but I don't want to sign any form."

And I told him that that wasn't the way it was going to go down.

Q Did Mr. Moody have a conversation with him about signing the form?

A Yes, he did.

Q Do you recall Mr. Moody discussing Mr. Silberberg's options?

MR. JACOBS: Your Honor, I object to the leading.

THE COURT: Sustained.

Q Do you recall the substance of Mr. Moody's conversation?

A Again, both Mordecai and Michael Silberberg, every time we talked to them, substantially were thinking of alternative action to take to serve their best interests, and Jim Moody told Mordecai at that time, he says, "Look, it is your choice." He said something to the effect of, "You cooperate with us or you go on the streets."

Q Was there any conversation between Mr. Moody and Mordecai Silberberg about prosecution?



2 A I don't recall it.

3 Q Was there any conversation about what the  
4 United States Attorney would do?

5 A We told him that we would take them to the  
6 United States Attorney and advise the United States At-  
7 torney of their current situation.

8 The United States Attorney has to advise them  
9 whether or not they would be eligible for a witness  
10 protection program or the United States Marshals witness  
11 protection program, and they agreed to it. They said,  
12 "All right, fine." They wanted to go see the attorney.

13 Q I show you, Mr. Parks, what has been marked  
14 Defendant Mordecai Silberberg's Exhibit A and I ask you  
15 if you can identify it.

16 A Yes, I can.

17 Q What is it?

18 A This is an interrogation and advice of rights  
19 form that we have anyone fill out that we think may  
20 possibly be a subject or a suspect in a case. That is  
21 the one that I gave to Mordecai Silberberg and the one he  
22 signed.

23 Q Does it bear your signature?

24 A Yes, it does. It bears mine, Watler Smith's  
25 and Mordecai Silberberg's.



2 Q Did Mordecai Silberberg sign it in your  
3 presence?

4 A Yes, he did.

5 Q Was it signed at or about 10:20 in the morning?

6 A It was signed at exactly 10:20.

7 MR. EPSTEIN: I offer this, your Honor.

8 MR. JACOBS: No objection.

9 xx

(Defendant Mordecai Silberberg Exhibit A  
10 received as Government's Exhibit 2 in evidence)

11 Q Mr. Parks, did you ever tell Mordecai  
12 Silberberg that if he did not cooperate with you, word  
13 would be put out that Michael was an informant and he would  
14 die in jail?

15 A Absolutely not.

16 Q Did you ever tell Mordecai Silberberg  
17 that unless he cooperated with you, word would be put  
18 out and his life would not be worth a dime on the street?

19 A No.

20 Q After the form was signed, Mr. Parks, did  
21 you interview Mr. Silberberg, Mordecai Silberberg?

22 A Yes.

23 Q Where did the interview take place?

24 A In his room at the Westbury Hotel.

25 Q Who was present at that time?



1  
2 A Myself, Walt Smith, I don't remember whether  
3 Jim Moddy was in the room talking to Michael at the  
4 time, but he could have been. I just don't recall.

5 Q How long did the interview last?

6 A It lasted about three hours, I think, either  
7 two or three hours.

8 Q What in general terms was the subject matter  
9 of the conversation?

10 A I asked Mordecai certain questions concerning  
11 his relationship or he and his brother's relationship,  
12 with individuals that we were interested in in the  
13 Brooklyn, New York area, primarily hijackers.

14 Q Did Mordecai Silberberg supply information in  
15 that area?

16 A Yes, he did.

17 Q On that occasion, Mr. Parks, did you ask him  
18 any questions about the Bankers Trust Company cashiers  
19 checks on September 19th?

20 A No, that was on September 22nd.

21 Q There came a time early in the afternoon  
22 when you stopped interviewing Mr. Silberberg, is that  
23 correct?

24 A That is correct.

25 Q Mr. Parks, did you accompany Mr. Silberberg

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and his brother to the Eastern District of New York that afternoon?

A I think that I was with the group that went over there, but I think that I sat in Mr. Pattison's anteoffice and the rest of the people went inside.

That is the best I can recall.

Q Mr. Parks, I now direct your attention to the following Monday, September 22n, 1975.

Did there come a time on that day when you interviewed Mordecai Silberberg?

A Yes, sir.

Q Who was present at that time?

A Again, Walt Smith, I think it was either Walt Smith or Ford Cole. I can't remember.

Q Did you have a conversation with him at that time about the Bankers Trust Company check?

A Yes, I did.

Q Can you tell us in very general terms what if anything he told you about his involvement?

A Yes, he said that eight weeks prior to that, seven or eight weeks prior to that, he and his brother were looking around for a moneyman that could give them \$18,000 or \$20,000 for some kind of travelers checks deal that they had set up. He then said that a person

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other activities with Mr. Silberberg during this two-week period, did you not?

A That's correct.

Q Mr. Moody, I now direct your attention to September 16, 1975. Did there come a time when you met with Mordecai Silberberg on that day?

A That's correct.

Q What if anything had happened prior to your meeting with him?

A The FBI had received information that Mordecai Silberberg was going to be kidnapped by certain individuals, held for \$20,000 ransom to his brother Michael, and then whenever Michael paid it off, they were going to kill them both because they wanted the money, they thought it was an old debt, and because they thought they were both informers.

Q What if anything did you tell Michael about this on September 16th.

A Michael knew about it. Michael knew about this. We told Michael about this. We were with Michael then, so we were protecting him. The reason that we wanted to talk to Mordecai was to explain the danger that Mordecai had at that time and to obtain Mordecai's assistance if he would give it.



1 hbsr  
2 Q Mr. Moody, did there come a time when Michael  
3 called Mordecai on September 16th?

4 A I don't specifically recall whether it was  
5 -- yes, it was on the 16th that he called him and had  
6 Mordecai meet me and Special Agent Cole, 76th Street and  
7 First Avenue.

8 Q Mr. Moody, does the FBI have a policy with  
9 regard to informing people when there had been word  
10 that they are to be killed?

11 A Yes, always.

12 Q Can you tell us what it is?

13 A Yes, if we receive information that a person's  
14 life is in danger, we will tell them regardless of who  
15 they are.

16 Q That applies for organized figures?

17 A Organized crime, yes, anybody. Any citizen.  
18 Anybody.

19 Q Mr. Moody, did there come a time when you  
20 met with Mordecai Silberberg on September 16th?

21 A That's correct.

22 Q Was that at 76th Street and First Avenue?

23 A That's correct.

24 Q Did you have a conversation?

25 A That's correct.



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hbsr

Moody - direct

25

Q Can you tell us the substance of the conversation, please?

A We told him of the danger to his life, that they thought he was an informant and that he was going to be kidnapped and be held for ransom and murdered. We asked him for his cooperation, like his brother was cooperating. He told us that he did not want to cooperate with us, that he did not believe anybody would kill him like that, and if he could talk to them, that he could talk them out of it. And he left.

Q Mr. Moody, I now direct your attention to the following day, September 17, 1975. Did there come a time on that day that Michael Silberberg was discovered wearing a recording device?

A That's correct.

Q After that, Mr. Moody --

THE COURT: What do you mean discovered wearing, by some third party?

Q Could you explain the circumstances of the discovery, Mr. Moody?

A He was meeting an individual by the name of Anthony Ferrante and another individual by the name of Joseph Snitzer in Katz' Dairy Restaurant in Brooklyn, and they discovered the recording device on his body.

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1  
2 Q After that discovery, Mr. Moody, was Michael  
3 Silberberg released unharmed?

4 A That's correct, yes.

5 Q Were there FBI agents surveilling that  
6 meeting?

7 A That's correct.

8 Q You were not one of them?

9 A I was not one of them.

10 Q Did there come a time after that meeting when  
11 Michael was taken back to the FBI office?

12 A That's correct.

13 Q What if anything happened at the FBI office  
14 after Michael was taken?

15 A We discussed what happened. We had Michael  
16 call Mordecai and asked Mordecai to come into the FBI  
17 office, it was very important. Which he did.

18 Q What happened after Mordecai arrived at the  
19 FBI office?

20 A We told Mordecai what happened, that they  
21 discovered the recording device on Michael. He was very  
22 mad at us and he was very mad at Michael for getting  
23 him into that situation. We talked to him again about --

24 Q By him, you mean?

25 A Mordecai. We talked to Mordecai again about

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1 assisting the government through testimony, and he refused  
2 to. He didn't believe that his life was in danger at  
3 all. So talking to Mordecai, I asked him if he would  
4 spend the night in a hotel with his brother at our  
5 expense until we found out what were going to be reper-  
6 cussions of finding the recording device on Michael. He  
7 agreed to that. We put both the brothers in a hotel,  
8 Lexington Avenue, I think near the Waldorf that night.

9  
10 Q Were they guarded during the course of the  
11 evening?

12 A No.

13 Q Did you bring them food at any time during  
14 the course of the evening?

15 A I don't specifically recall feeding them  
16 that night. I did bring them meals at times, yes.

17 Q Mr. Moody, I now direct your attention to the  
18 following day, September 18, 1975. Did there come a  
19 time when Mordecai drove out to Brooklyn?

20 A Yes.

21 Q Who if anyone accompanied him?

22 A Special , Merrill S. Parks, Jr. and  
23 Walter Smith. They accompanied him in a different  
24 automobile. Following him for protection.

25 Q Did there come a time when they returned from



1  
2 Brooklyn?

3 A Yes.

4 Q After their return, were the Silberberg  
5 brothers again kept in a hotel that evening?

6 A Yes, they were put in a different hotel,  
7 Westbury that night.

8 Q Were they guarded that evening?

9 A No.

10 Q Mr. Moody, did you have any conversations with  
11 Mordecai on the 18th about his willingness to cooperate?

12 A I don't recall whether I had conversations on  
13 the 18th with him.

14 Q Directing your attention to September 19th,  
15 Mr. Moody, the following day, 1975, did there come a time  
16 on that morning when you were summoned to the Westbury  
17 Hotel?

18 A Yes. It was my understanding on the 18th,  
19 that after Mordecai being in Brooklyn, he decided that  
20 he would cooperate.

21 MR. JACOBS: Objection to his understanding.

22 THE COURT: Sustained.

23 A Mordecai Silberberg was to cooperate with us  
24 on the 19th. On the 19th, I received a phone call  
25 from the agents over in the Westbury Hotel.



MR. JACOBS: Objection to the conversation.

THE COURT: Sustained. You received a telephone call. And then what happened?

THE WITNESS: That they required my presence.

THE COURT: What did you do after you received the telephone call?

THE WITNESS: I went to the Westbury and talked to Mordecai and Michael Silberberg.

Q Can you tell us the substance of your conversation with Mordecai Silberberg at that time?

A Mordecai Silberberg was reluctant to sign an interrogation advice of rights form, a warning and waiver form.

THE COURT: Did he sign one eventually?

THE WITNESS: Yes, sir.

THE COURT: All right, go ahead.

A And I sat down and talked to him about the alternatives he had at that time as I saw them.

Q Can you tell us the substance of that conversation, Mr. Moody, please?

A I told him that he had three alternatives. first one was to cooperate with the government and it is known that the information that he gives us at that time could be utilized against him and with his cooperation,



1  
2 we may be able to get him in federal protective custody  
3 as a relocated witness. The second alternative was  
4 for him to go back out on the street. The third alterna-  
5 tive was for him to run: During this conversation,  
6 I talked to him about the warning and waiver form just  
7 like his brother had signed.

8 Q Mr. Moody, at the time you told Mr. Mordecai  
9 Silberberg that Michael Silberberg had signed a warning  
10 and waiver form, had Michael signed a warning and waiver  
11 form?

12 A Apparently not.

13 Q Did you believe that Michael had signed one?

14 A I believed he did.

15 Q Mr. Moody, where was Michael during this con-  
16 versation?

17 A He was in the room with us.

18 Q Was Michael in the room when you told  
19 Mordecai that he had signed a warning and waiver form?

20 A That's correct.

21 Q Mr. Moody, you had been previously present when  
22 Michael was given his rights, isn't that correct?

23 A I gave them.

24 Q Mr. Moody, did you ever tell Mr. Mordecai  
25 Silberberg that the warning and waiver form was a mere



1 jpa

Silberberg-cross-redirect 222

2 A Yes.

3 MR. EPSTEIN: No further questions.

4 THE COURT: You may step down.

5 MR. BRACKLEY: One more question.

6 REDIRECT EXAMINATION

7 BY MR. BRACKLEY:

8 Q When you saw him in the MCC, was he serving  
9 that sentence?

10 A Yes.

11 Q Was he still serving that sentence?

12 A Yes.

13 Q The MCC being the correctional facility, it  
14 is the prison, the jail?

15 A Yes.

16 THE COURT: You may step down.

17 (Witness excused.)

18 THE COURT: Next witness.

19 MR. BRACKLEY: Defendant will rest.

20 THE COURT: We will excuse the jury for a  
21 few minutes.

22 (The jury left the courtroom.)

23 THE COURT: Motions, Mr. Brackley?

24 MR. BRACKLEY: Your Honor, I would renew my  
25 motion to dismiss, but I would more fully ask your Honor



1 to consider the second count of the indictment, which  
2 is charging the defendant with on or about August 27th,  
3 in the Southern District of New York, he wilfully,  
4 unlawfully and knowingly, with fraudulent intent, did  
5 transport and caused to be transported interstate bonds  
6 from New York to Washington. I don't believe there  
7 is any evidence before this jury that they can infer  
8 that he had knowledge that the bonds he had left with  
9 Lipari were going to be taken to Washington.  
10

11 I think it is quite clear from the Agent  
12 Yablonsky, who testified that he had no contact at all  
13 with the defendant. He spoke to a man named Korsen.

14 It is clear from Agent Moody's testimony  
15 that when he began to wear the bug the conversations  
16 he had with Lipari were all to the effect that men had  
17 been arrested in Washington and still in jail. It is  
18 obvious the defendant had no contact with those men.  
19 Otherwise he would have known they were either out of jail  
20 or in jail.

21 Lipari had indicated to the defendant that  
22 he had sold them to Korsen, but at no time did he indi-  
23 cate that he had authorized Korsen to bring them to  
24 Washington, D.C. Although the checks did end up in  
25 Washington, D.C., I don't believe there was sufficient



2 evidence that Michael Silberberg actually caused them  
3 to be transported there, other than the fact that he  
4 gave them to Lipari.

5 THE COURT: Well, if he gave them to Lipari  
6 with the purpose of having them sold --

7 MR. BRACKLEY: That is correct, Judge, but  
8 I don't believe --

9 THE COURT: My charge in that regard is  
10 that this element of the offense is satisfied if you find  
11 beyond a reasonable doubt the defendant, knowing the  
12 securities to have been forged or counterfeit, gave  
13 them to another to dispose of without limitation as  
14 to where the sale was to have been made and the other  
15 person took it across state lines. So, on the basis  
16 of that, I deny your motion.

17 MR. BRACKLEY: Can I except to that portion  
18 of the charge as it relates to this case?

19 THE COURT: You will have that opportunity  
20 after I charge.

21 MR. BRACKLEY: With respect to the first count  
22 of the indictment, the defendant would move to dismiss.

23 THE COURT: Denied.

24 I will now rule on part of the charge.

25 MR. BRACKLEY: Do you have the portion



CERTIFICATE OF SERVICE

I certify that on November 3, 1977 I  
had ~~delivered~~ one copy of the Brief and  
Appendix to Appellants to Robert Fiske,  
Esq., One St. Andrews Plaza, New York,  
N. Y. 10007.

Donald S. Trow